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THE COUNTY COMMUNITY AND ITS GOVERNMENT

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The county is an aspect of our American system of government and politics not unimportant yet quite neglected. The monographs of the Johns Hopkins Studies, Howard's Local Constitutional History, and Dr. Fairlie's pioneer work, have, however, opened up the field. There is needed now a more synthetic treatment of the existing systems, presenting the nature of the county as an economic and social unit; the practises which convert the constitutional and statutory systems into working agencies; the relations of the county to our state, municipal, and party government. There are peculiar difficulties in the way of a comprehensive and intensive study of this field, but enough can readily be done to hasten the application to it of present principles of institutional change.

The county is found throughout the United States as a unit of government, essentially the same, but operating under widely varying conditions. Every state is composed of such. A few reservations of the national government comprise the only areas and populations not subject to its jurisdiction, and these are being rapidly assimilated. Alaska is still governed as an unorganized territory. The extension of the county net over the country fully kept pace with the advance of settlement, and supplied to the pioneer the absolute necessities of government,—justice, order, titles to property, probate of estates. Though differing widely in form and activities in the various parts of the country, and by reason of the changes made from colonial times to the present, yet it is substantially the same unit whenever and wherever found.

The county permeates our political, legislative and administrative machinery. It is widely used as a unit (in various forms) of legislative representation, and of administrative activity, throughout the country. Party organization is cast in this mold. And in no small degree local economic and social agencies utilize it as a unit. The state and national systems of government and politics are thus built

upon it; while in a very true sense the local government units, such as townships and municipalities, have grown out of it or within it.

From all these points of view the county community is of widely varying vitality and importance in the different sections of the country. More especially in the South and West it is, over large areas, practically the only unit of local government, the sub-districts being largely subordinate to it, and municipal life comparatively undeveloped. Some 300 counties (mostly in Texas, Tennessee, Virginia, Louisiana, California, Nevada and New Mexico), or ten per cent of the total, have no incorporated place within their limits. In general, too, its use as a unit of political or governmental organization is greater in the East than in the West (New England being excepted), where coequal population districts have frequently taken its place. The sharpest differences appear when contrasted in New England and the South. More especially in Rhode Island, Connecticut and Massachusetts, the presence of several large cities in over half of the counties destroys their unity effectually, though rural counties with some community sense do exist there. In the New England group, the county is not used as a unit of legislative representation; administrative activity (not to same extent as elsewhere); nor of party organization. The town is the vital community, with the municipality increasingly so. Here, too, the county has little constitutional basis, and is more largely under legislative control. In Rhode Island the county is not even corporate. In the South it is the historical unit; it has a well-defined constitutional position; generally the state government has no administrative control; the sub-districts are its administrative circumscriptions; it is fully used as a unit of legislative representation, administrative activity, and party organization; the counties are small in area, and have usually only one urban center. In a modified way, the same is true of the middle states and the West.

While all over the country are written the marks of the period of frontier expansion, making its formal existence incomprehensible apart from full recognition of that factor, the changes induced in the county community by the urban movement are at present most fundamental. The growth of urban communities within the counties intensifies every one of their problems. The need for present radical and thoroughgoing change in the county system is the result of such changed conditions. Changes in organization and functional scope

have been most rapid in the city counties. And just here where county action is most vital, attention is preoccupied by the city government, with its functions affecting more directly the welfare of the people.

The popular conception of a county is that of a rural unit, but the typical county is essentially urbo-rural. As late as 1870 one-quarter of them contained no incorporated place, but at present barely one-tenth are without such. They are of a great variety of types differing all the way from the metropolitan city-counties to the most purely rural, through all intermediate grades. The county net is relatively complete. Recent additions were one-third in Oklahoma, and scattered among the new irrigation and mining states of the West, Northern Minnesota, and growing agricultural sections in the South. The time of wholesale creation is for most of the states long past, some older states having had practically no creations for a century. Only constitutional amendment can add to the number of counties in most states. The county net has responded in growth to the needs of an expanding people, but has not undergone changes corresponding to the concentration of population and the rise of urban communities. The only response to this change of the last quarter of the century has been the formation of a few city-counties; the more or less complete segregation of the larger municipalities from their counties; and some modifications in judicial organization and systems of legislative representation.

Even a casual glance at a county map of the United States shows certain features which aid in an understanding of its nature. They differ greatly in area from one section to another and within the same state. There has consequently been a tendency to reduction of size, the frontier counties often embracing what is now a whole state. After the appearance of constitutional restrictions on area the device of "unorganized counties" came into use, a score still existing in Texas and North Dakota. Many abuses of the legislative power to create counties had been experienced, both excessively large and unduly small areas being organized, and the constitutional limitations tended to standardize a type. The most common extent is from 400 to 600 square miles, given a radial distance convenient for a day's trip by highway—a matter of some importance under certain conditions, before the coming of the railroad, telephone, postal facilities and the development of local tax-paying agencies and

abstract offices made the methods of government less direct. And as the area has been rendered convenient as the county net spread, so in general the county is a unit in whose delimitation no important topographic or physical feature has been ignored. County boundaries, too, even in the oldest states are constantly being modified as redistributions of population and lines of communication change. But there is much arbitrariness in detail which cannot fail to have its effect upon political life. The constitutional provisions have tended to fix the county.

Mere statistics of the population of the governmental units in this country derive value from the fact that so many features of our political life are based upon numbers. And this is particularly true of the county because of its widespread and frequent use as a unit. Counties differ widely in numbers of population even as within the same state. They grow very unequally, many declining; while great changes of distribution occur owing to the rise of cities. And this latter is the factor producing the greatest variations in size. In some parts of the country the counties are more nearly alike, as in the South and Mississippi Valley, but in the urban northeast section and in the Far West they differ greatly. Constitutional provisions regarding minimum numbers have tended to standardize them, though to a less degree than in the matter of area. These are in general for the purpose of obviating too small counties such as could not readily support a county organization, and to do away with attempts to utilize the county's representative character. New York county with over two million is the largest; the smallest have a few hundred: but few are of these extreme sizes, more than half the whole number having from 10,000-30,000, with the typical county containing 18,000. The typical county has naturally tended to have an increasing population from decade to decade, altering its capacity as an electoral unit and the significance of the fee system adding statutory offices and deputies to the organization while the constitutional outline was preserved, thus changing its essential nature but not its external form and giving it the appearance of an organization merely growing to its present form, and changes in conditions and methods of functional activity, *e. g.*, charities, courts.

Probably the best basis for a classification would therefore be upon their distribution of rural and urban conditions. Mere numbers of population do not always indicate even such conditions, for many

almost wholly rural counties have larger populations than some largely or even wholly urban. And under present conditions of our American society *conditions* rather than mere *numbers* must be taken into account; a truth not so apparent for earlier periods. There are wholly urban counties such as Baltimore, New York, St. Louis; counties with a large city and suburban rural fringe, for example, Cook (Chicago), Hamilton (Cincinnati), Wayne (Detroit); those with a medium-sized or small city and a predominating rural population, for instance, Dane (Madison, Wisconsin); and lastly those with only country towns or wholly rural. There are some hundred and twenty-five counties in which a single city has more than half the population, this being the case with all cities over 100,000 and the majority of those above 25,500. The predominancy of urban population and conditions is even more marked if the total urban population of the counties rather than a single unit is taken. On the other hand, some ten per cent of the counties have no incorporated place—a number rapidly being reduced. Probably one-half of the counties contain no place of 2,500 people. Dr. Fairlie, referring to conditions in 1900, estimated that five-sixths were rural, *i. e.*, contained no place of 8,000 up. It is clear that the economic and social basis of county government and politics is being radically transformed, while a constitutional fixity and political apathy maintains the unit and its formal organization and powers intact. Interesting special problems arise, for instance, in the black counties of the South, in the city-counties, in industrial metropolitan districts, in mining counties.

The political and governmental machinery of such communities is truly paradoxical. Constitutional fixity, combined with radical internal changes of economic and social nature, together with the incorporation of the county into the larger systems of the state government and party organizations, result in a situation of great complexity, aptly termed by Mr. Childs—the “county jungle.”

The organization of the American county of to-day has all the principles embodied in other phases of our government, in an extreme and constitutionally fixed form. It has grown out of the colonial county by changes of form provided for by constitutional measures, rendering it elective, freeing it from state control, differentiating new offices out of the earlier organization of judge, sheriff and bench of justices, and adding in practice and by legislation a mass of boards,

commissions, minor administrative offices, and deputies, to answer the needs of increasing population. Amid much variety in organization from state to state, and for different classes of counties within the same state, the typical county may perhaps be found. The scope of the organization naturally depends upon the functional capacity of the county from place to place. The most attenuated organizations are found in New England (*e. g.* Rhode Island) and Georgia; the most elaborate is probably that of Cook county (Chicago). A county board; a court, or courts; a number of administrative offices, are typical elements, to which may be added the party committee. The sheriff, clerk; almost always the treasurer, attorney, coroner, surveyor, school superintendent, are the constituent officials. Other officers are found in some states (tax-collector, assessor, auditor, public administrator, physician); certain traditional officers are sometimes missing, officials of other units acting (coroners, recorders of deeds, attorneys); consolidation of offices, in less developed states has occurred (various clerkships; district and probate courts; treasurer and auditor and assessor; sheriff and tax collector); the city-counties sometimes merge the council and board, and, as often with counties containing large cities, have a differentiated judicial system. Other variations are the result of special legislation of the present, or remaining in force from a period preceding constitutional limitations (*e. g.* in Maryland); or of elaborate classification, permitted by the courts (*e. g.* California); while constitutional permission of local option in the type of board (*e. g.* between supervisor or commissioner forms in Illinois, or as between numbers 3, 5, 7, for a commissioner board, as frequently in the West) gives further occasion for difference. A number of states beginning with Wisconsin (1848) require the legislature to provide a "uniform system," and usually county organization must at least be provided for by "general law." The constitutional provisions which appeared in the first years of our national history tend again to standardize the general form of the county, and to give it fixity. Otherwise it is under legislative control, with the courts favoring liberal interpretation; certain referendial options being granted, as indicated above, but in general little self-organizing power being granted. The California amendment of last year is exceptional. All the chief principles of the constitutional provisions were established before 1850, the years from 1820 on being those of greatest

structural change; a few constitutional amendments supply the only attempts at adaptation to later conditions. These provisions refer only to structure, however, and important statutory changes have occurred by shifting of functions. In certain states the legislatures are almost entirely left in control (*e. g.* Iowa); the boards are very frequently not constitutionalized. In general, then, county organization has grown in accordance with our usual principles of governmental evolution and with some adaptation to special changes and conditions, though only partial adaptation in New England and in the South.

Our county is a growth out of an original judicial organization, by a process even now going on in the South (*e. g.* Georgia). The administrative and properly judicial agencies have, however, been very well differentiated, the county being now usually primarily an administrative unit and agency, and not always coterminous with court areas, except in so far as universally the administrative offices of the courts are county officers. There is in some states west of the Mississippi no specifically county judge either of general or special jurisdiction, districts being the rule owing to small population, and in New England probate is often a town matter. But with completer settlement the county is in a very large number of cases the judicial district. And the importance of the administrative officers of the courts (sheriff, attorney, coroner, clerks) in the process of justice, law and order must not be underestimated.

Except in a few cases (the Cook county president, supervisor in New Jersey, the Georgia ordinaries, the supervisor in South Carolina) no legal chief executive can be said to be provided. The chairmen of the boards, whether under the supervisor or commissioner plan, and more especially the presiding judges in the South, or the chief financial official, as the treasurer or auditor, or even the sheriff, have a position of greater influence than others. Dr. Fairlie has suggested the union of the powers of the sheriff and board-chairman to create a real chief. Nor must the chairman of the county party committee be ignored. Occasionally, too, there is a county "boss" who may be any or none of these. But the county is not so disorganized as it seems. Party selection provides some connection between these officials almost universally elective. And where changing party color, non-coincidence of terms, and the like occur, bipartisan arrangements are in practice possible and usual. The fee-system,

too, has operated to loosen the organization, but its elimination or modification in favor of the salary system, over which the boards have more or less control, and the financial officers some check, tends to some control. It is along the lines of party and financial control that the organizing principles of the county system must be looked for.

In all states, except Rhode Island and Georgia, there is regularly a county board. In a few cases another body acts, *e. g.*, the town selectmen in Nantucket; the city councils in consolidated counties. Unlike central and municipal legislative bodies it is unicameral. But Indiana has a dual board (county commissioners and county council), New Hampshire and Connecticut have their "conventions" of county legislative representatives; Pennsylvania (and a few Michigan counties) has the board of auditors; and some other special cases occur. The board's powers are administrative (decision of details in the application of state legislation, minor ordinance power, appointments), rather than legislative; in a few states (Massachusetts, Connecticut, New Hampshire) they have no power to levy taxes. Regularly, too, they act in some form as election boards, jury commissioners, boards of review, board of health, etc., but there is a distinct tendency, especially in the larger counties, to create for these purposes special boards,—a movement which will leave the board more to matters of policy. The county is now in the "board stage," the first to develop and become more independent (as in the case of municipal organization) being the financial boards. These latter, too, are often elective (*e. g.* in Cook county) like the main board, not appointive as are other special boards. The clear rationale of the development of county organization both with reference to the board, and also as concerns the differentiation of the treasurer, auditor, tax collector, out of the original office of sheriff, has been that of financial control.

Short terms characterize the county, two years being the typical, with four years common, especially in the South and West; one year occurring in New England, and three and five years in the Middle Atlantic States; six and longer being quite exceptional. The financial officers and the chief officers of judicial administration (excluding judges and clerks) have in general the shortest terms. The constitutions frequently prohibit, by a variety of methods, immediate re-elections especially for the treasurer and sheriff, but

in a few states (*e. g.* Washington) applying it to all county officers. Board members are usually exempted from such restrictions. Various means have been found, however, to circumvent these restrictions, and where none such occur selections of county officials, especially for boards, judges and clerical offices, are very frequent, at least for a second term, and often for considerable periods. Non-coincidence of terms of the various officers is common in the states north of the Ohio and east of the Mississippi, but space is lacking for its discussion. The county is in the hands of amateurs temporarily in office, though experience shows the deputy staff to be quite permanent. The clear tendency is to the development of a professional deputy staff, the chief offices being temporarily filled by men whose business interests are more or less directly affected by the particular office held.

Only superficially are the chief county officers to be regarded as popularly elected—they are rather selected by party (which means the local committee); and appointment dictated frequently by party expediency, is the real method of selection of deputies. The larger the county the more true this is likely to be, for the large subordinate staff then becomes politically more vital than the formal constitutional heads. Appointment of chief county officers rarely occurs in the United States, vacancies being the only places at all regularly filled by this method, and even here it is giving place to "special elections." Removal is, in accord with general American practice, usually by formal trial, occasionally the governor (as in New York, Wisconsin, etc.), or governor and legislature (as in Washington and Oregon), the attorney-general (as in Iowa), or the supreme court, as in other cases, being given power to remove, or suspend. The very frequent "resignations" occurring, and the very infrequent removals show the way out in practice. The "recall" may now enter as a factor.

Incompatibility of office as between the various phases of our governmental system is commonly provided for, postmasterships being excepted. In its origin employed as a method of lessening multiple office-holding, and to separate the legislative from the judiciary and county officials, it has been later used to further party organization, and give local self-government. State legislators and executive officials are now very commonly recruited from men experienced in county politics and administration, more especially as attorneys, and members of the boards.

The legal qualifications for county office are the usual ones of citizenship, residence; and the disqualifications, those of pauperism, crime. But in practice many qualifications appear; probably the chief of which is party allegiance. The property qualification has been almost universally eliminated, the bond having taken its place. Custom more or less in different sections decrees that coroners shall be medical doctors; judges and attorneys, and even sometimes court clerks, shall be lawyers; school superintendents, school teachers; and sometimes such qualification is legally provided for. Practice is making very frequently treasurers to be bank officials, sheriffs to be livery or garage keepers, coroners to be undertakers, board members to be merchants. Close study should be given to personnel from this point of view. Women, especially in the Middle states and West, appear largely as school officials, less frequently as recorders, registers of probate, court clerks, treasurers, auditors and some as probate judges. Deputies tend to become chief officers of their departments. In general, the county offices throughout the United States tend to be occupied more and more by men (and women) of the professional clerk class, and by business men whose interests are in some way affected.

Elections for county offices are regularly held at the time of the general elections in November. There has been little attempt to separate them and there are some reasons why they should not be, chiefly because of the county's relation to the state administrative system. Naturally the county officers are on the "blind end" of the ticket. Party regularity of an extreme form in the votes for county officers is the result. The personnel of the officers is also affected, and the party finds the county end of the ticket a most valuable asset, especially as the county offices, whether under the salary or fee system are abnormally well paid on the average for clerical positions, and some of the offices bring perquisites which are large.

The county organization being thus peculiarly adapted to the perpetuation of many things inconsistent with present institutional ideals, its powers may be shown to have a no less vital bearing. The functions which our counties exercise are in general those of its English model: administration of justice, law and order, elections and taxation. Its corporate character is American; and to its general powers have been added probate (transferred from ecclesiastical to secular control), public record of titles, public charity,

public survey, public prosecution of crime, a wider scope of elections, and later education, highways, and party activity. Its use as a military unit has in great measure become obsolete: coequal units of population have become widely used for representative purposes and judicial jurisdiction; elections have been decentralized to precincts, owing to new habits and principles of political life. The general scope of powers thus accorded the county embraces practically all the *regulative* functions granted to the states, and the local self-government of the county makes the American situation unique. For in England and the colonies the control over these local functions of government—without whose relatively efficient exercise no civilized society can exist—was highly centralized. Our forefathers fought for local control over them and won it, though in the history of the colonial struggle this has been neglected. During the period of frontier expansion they were those needs of government absolutely essential, and the formation of counties kept pace with settlement. Owing to the nature of the county as a community, and the changes in its economic and social condition, and political life, popular attention has been diverted, and governmental reform focussed on activities more directly affecting the welfare of society and the daily living conditions of the average individual. The effect of the constituent county functions, formal and regulative as they are,—justice, law, order, titles, public record—is scarcely at all upon the average citizen of to-day, but is rather upon society in general and over longer periods of time. Compared with municipal and state problems the county lacks directness, picturesqueness, and hence attention. Many phases of county activity cannot be estimated by using expenditure as an index, and hence the financial appeal is lacking. Since the radical changes in methods of exercise of the chief county functions brought about in the early constitutions of the states, such as in the administration of justice, rules of inheritance, abolition of traditional practices in the coroner's office, etc., and the addition of new functions mentioned above, little change in the law governing county activities has occurred. Some state administrative control has developed over the welfare functions such as education, roads, charities, and over taxation, health, elections. Segregation of the larger municipalities has withdrawn the cities from their jurisdiction. And, as a result of growing inefficiency induced by the changed nature of the county life, powerful private agencies have developed to perform for the

community such functions as protection of life and property, record and abstract of land titles, administration of estates, surveying. These naturally have an interest in the maintenance of the *status quo*, while the apathy of the electorate and the activity of office-holders and classes especially interested in county functions, contribute to maintain the county as it is.

The American county occupies a vital place in the present problem of our government and politics; but it is a unit of peculiar difficulty either for investigation or reform.